

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1948 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JETHVA NIKUNJ MOHANLAL

Versus

GUJARAT UNIVERSITY

Appearance:

MR BP TANNA for Petitioner
MR NV ANJARIA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a student of final year B.Sc. filed this petition before this Court and has challenged the action therein of the respondent imposing punishment of prohibiting the petitioner from appearing in any examinations of the Gujarat University for nine years, i.e. upto 30.6.2003.

2. In the month of March-April 1994, the petitioner had appeared in Third Year B.Sc. examination held by the Gujarat University. The examination centre of the petitioner was M.G. Science College, Ahmedabad and his seat number was 584. The petitioner failed in the said examination. The petitioner applied for rechecking of the marks. He did not receive the result of rechecking for quite a long period and in fact it has not been received by him till the date of filing of this petition before this Court. On 11.11.94, the petitioner received a letter from the respondent-University under which he was asked to remain present with last marksheets and meet the incharge Controller of Examinations. Accordingly, the petitioner presented himself alongwith the said document before the Incharge Controller of Examinations. The original marksheets were collected by the Controller of Examinations from the petitioner and an Inquiry Committee has been introduced though the petitioner has stated that he was not made known of introducing such Inquiry Committee, not any charges were levelled against him. Further grievance has been made by the petitioner that when the petitioner appeared before the Committee the members thereof started to harass and threatened the petitioner and he was also coerced and forced to make the statement. The petitioner filled in the examination form on 16th August 1994 for reappearing in the examination and accordingly he appeared in the Third B.Sc. examination started on 14th November 1994. Under the letter dated 18th June 1995, the petitioner was communicated charges and he was directed to remain present before the Unfair Means Committee on 25.1.95 at 2.00 p.m. to make necessary submissions. Before the Unfair Means Committee, the petitioner's statement has been recorded. Under the Notification No.74 of 1995 dated 30.1.95, annexure 'H', punishment of prohibiting the petitioner from appearing in any examinations upto the year A.D. 2003 has been given.

3. The learned counsel for the petitioner had made only submission that the punishment to debar the petitioner from appearing in any of the examinations upto year A.D. 2003 is highly excessive and disproportionate to the guilt. It is a case of a student and even if he has committed some unfair means in the examination, then too the punishment should have been reasonable and not to the extent of spoiling his career altogether. It is a case where punishment which has been given to the petitioner is arbitrary.

4. On the other hand, the learned counsel for the respondent contended that the unfair means which has been

adopted by the petitioner in examination was grave and serious and as such, punishment which has been given in the present case should not be interfered by this Court.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. It is true that the charges which have been there against the petitioner are grave and serious in nature but the punishment should be commensurate with the guilt. It is a case of a student and a young person whose career is at stake. In the matter of punishment even in criminal cases, the approach is reformatory and such approach should have been there in the case of punishment given to the students who are found to be using unfair means. It is true that a lenient view should not be taken, but at the same time balance has to be drawn to see that career of a student may not be spoiled altogether. If a student is debarred from appearing in any examination of University for a long period of nine years, then after that period, he may not be in a position to take any further education. The learned counsel for the respondent-University is unable to justify how this punishment of nine years is reasonable and justified. Taking into consideration the charges which have been framed against the petitioner, it is a case where he made an attempt to get his result improved with connivance of some other persons. I do not find anything on the record that any criminal action has been taken against the persons involved in the incident. Though in the matter of unfair means, in the cases where students have been punished for using unfair means in examination, this Court has very very limited power of judicial review, but nevertheless where this Court finds that the punishment which has been given to the student is shocking to the judicial conscience, then certainly in the quantum of punishment this Court may interfere with. A reference may have to the decision of Supreme Court in the case of B.C. Chaturvedi v. Union of India, reported in JT 1995(8) SC 65. Though that was a case of punishment given to the employee in the departmental disciplinary inquiry, ratio of that case can also be applied to the present case. Debarring of the petitioner for all these years, i.e. upto A.D. 2003, is certainly shocking to the conscience of this Court.

7. In the result, though the finding of the Unfair Means Committee, holding the petitioner guilty of using unfair means in the examination is maintained, the penalty debarring him from appearing in any of the examinations of University upto 30.6.2003 is substituted

by the penalty of debarring the petitioner from appearing in any of the examinations of the Gujarat University upto 30th June 1996. The petitioner shall be entitled to appear in the University examinations to be held in the academic session 1996-97. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)